

RECEIPT # 404351
 AMOUNT \$ 150.00
 SUMMONS ISSUED ✓
 LOCAL RULE 4.1 ✓
 WAIVER FORM ✓
 MCF ISSUED ✓
 BY DPTY. CLK. SS Jones
 DATE 6-23-04

FILED
 IN CLERKS OFFICE

THE UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS
 CENTRAL DIVISION

DISTRICT COURT
 DISTRICT OF MASS.

CIVIL ACTION NO.:

VIRGINIA LATINO
 Plaintiff

VS.

UNUM PROVIDENT CORPORATION
 Defendant

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COMPLAINT

04-40121 FDS

I. INTRODUCTION

Virginia Latino is a disabled former employee of Fallon Health Services. She was covered under a disability plan maintained by Fallon. She suffers from autonomic neuropathy, a neurogenic bladder, a pseudo obstruction coli with chronic constipation, severe scoliosis with accompanying back pain, depression and panic attacks. On June 29, 2001, she submitted a claim for disability which was denied. She has appealed the denial of her claim. Defendant indicated it made a final decision. She seeks review of the decision in this Court pursuant to the Employee Retirement Income Security Act (ERISA).

II. PARTIES

1. Virginia Latino is an individual who resides in Worcester, Massachusetts.
2. UNUM Provident administers the long term disability plan which Plaintiff had available to her as part of her employer's benefit plan. The plan is a qualified employees' disability plan within the meaning of 29 USC 1002(2)(A).
3. UNUM Provident maintains offices in Portland, Maine,

Chattanooga, Tennessee and Worcester, Massachusetts. It regularly conducts business in Massachusetts. It is a licensed out-of state insurer.

III. JURISDICTION

4. This action is brought before this Court pursuant to the Employee Retirement Income Security Act, 29 U.S.C. Section 1131(a)(1)(B).

IV. FACTS

5. Virginia Latino was a medical assistant working for the Fallon Health Services for several years.

6. On March 3, 2001, Plaintiff became unable to work. Since that date she became "disabled" under the terms of the long term disability plan provided to her by her employer.

7. Fallon paid Ms. Latino through May 26, 2001.

8. On June 29, 2001, Plaintiff Latino submitted a claim for long term disability benefits to the Defendant, UNUM.

9. Plaintiff's application was denied by notice issuing on August 7, 2001. She made a timely request for review of that decision.

10. On November 26, 2001, Ms. Latino received the Defendant's final decision on her formal request for review.

11. Plaintiff was approved for Social Security Disability benefits, having been awarded benefits on March 1, 2002, and found disabled back to March 3, 2001.

12. There were a number of correspondences between Plaintiff and Defendant through May, 2004. Indeed, Plaintiff

submitted additional information to Defendant in April, 2004. Defendant indicated in a May 17, 2004 letter, that it may review those records at some point, but was waiting for additional records from the Social Security Administration to be provided.

13. UNUM's decision is arbitrary and capricious, is not supported by a good faith evaluation of the evidence, and/or is contrary to law, because:

- a. It failed to give appropriate attention to un rebutted treating source testimony from both the primary care physician and the treating neurologist in the record regarding the Plaintiff's diagnoses, as well as their clinical documentation of her disabling medical signs and symptoms; and
- b. It ignored the opinions of those treating physicians regarding Plaintiff's capacity to perform her job, with no conflicting evidence in the file;
- c. It completely ignored Plaintiff's symptoms in evaluating her claim;
- d. It failed to consider the combined effect of all of Plaintiff's physical and emotional difficulties; and
- e. It applied an inconsistent definition of disability to her claim, sometimes requiring her to be disabled from performing her own work only, at others requiring her to disabled from performing any work for which she was suited.

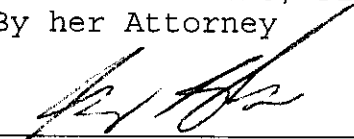
WHEREFORE, the Plaintiff respectfully requests that

this Court issue the following relief:

1. Assume jurisdiction of this case; and
2. Find that Defendant has violated the relevant provisions of the ERISA by its actions in denying Plaintiff the benefits she is legally entitled to receive; or
3. Remand this case for further proceedings to consider all of the medical evidence presented by the Plaintiff; and
4. Award Plaintiff attorney's fees pursuant to 29 U.S.C. § 1132(g)(1); and
5. Award such other relief as this Court finds just and proper.

Respectfully submitted,
VIRGINIA LATINO, Plaintiff
By her Attorney

Dated: June 22, 2004



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Telephone: (978) 937-1600

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Virginia Latino

DEFENDANTS

UNUM Provident Corporation

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Worcester
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Ronald B. Eskin
228 Central St.
Lowell, MA 01852
(978) 937-1600

Attorneys (If Known)**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ DEF 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ DEF 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☒ X 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 690 Other		<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury					<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 195 Contract Product Liability						<input type="checkbox"/> 895 Freedom of Information Act
						<input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice
						<input type="checkbox"/> 950 Constitutionality of State Statutes
						<input type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

29 U.S.C. Section 1131(a)(1)(B) Employment Retirement Income Security Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

June 22, 2004

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

04-40121

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Virginia Latino v. Unum Provident **FILED**

CLERK'S OFFICE

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

2004 JUN 23 P 3:24

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES ☐NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES ☐NO ☒

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES ☐NO ☒

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES ☐NO ☒

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES ☒NO ☐A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?EASTERN DIVISION ☐CENTRAL DIVISION ☒WESTERN DIVISION ☐

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION ☐CENTRAL DIVISION ☐WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

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